



## **AGENDA MEMO**

**CITY COUNCIL MEETING DATE: MAY 6, 2009**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: VAR-33522 - APPLICANT/OWNER: DENNIS WHITE AND SUSAN SCHAFF**

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### **\*\* CONDITIONS \*\***

Staff recommends DENIAL. The Planning Commission (5-1/mb vote) recommends APPROVAL, subject to:

#### **Planning and Development**

1. All construction on premises without permit must be permitted and finaled within 90 days.
2. This approval shall be void one year from the date of final approval, unless a business license has been issued to conduct the activity, if required, or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This request is for a Variance (VAR-33522) to allow a seven inch side yard setback where five feet is required for existing additions to the principle dwelling along the eastern property line and a zero-foot side yard setback along the western property line for an existing Accessory Structure (Class II) where three feet is required by Title 19.08.040. Since the existing additions to the principle dwelling along the eastern property line and accessory structure along the western property line were constructed before consulting Title 19 standards and without building permits, it has been determined that the request for Variance (VAR-33522) is a result of a self-imposed hardship. Staff recommends denial of this Variance request.

**BACKGROUND INFORMATION**

<b><i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i></b>	
08/01/82	A deed was recorded for change of ownership.
04/19/04	A Code Enforcement case (#13218) was processed to check for permits for courses added to a block wall in the front yard at 4601 Evergreen Place. The case was resolved on 08/25/04.
08/04/04	The City Council approved a Variance (VAR-4520) request for an existing six-foot wall where four feet is the maximum allowed in the front yard setback. The Planning Commission recommended approval of the request.
09/01/04	A Code Enforcement case (#21149) was processed for a complaint indicating that the resident is operating an illegal Indian Artifact business from the back of the residence. The case was resolved on 09/16/04.
12/01/06	A Code Enforcement case (#48357) was processed for a complaint of very tall in the front yard. The case was resolved on 12/11/06.
12/18/08	A Code Enforcement case (#72894) was processed for an added new room and extra extension on a wall, which may not have a permit. This case is currently still pending.
04/09/09	The Planning Commission voted 5-1/mb to recommend APPROVAL (PC Agenda Item #38/jb).
<b><i>Related Building Permits/Business Licenses</i></b>	
02/25/90	A building permit (#90058380) was issued to relocate a gas meter. The permit was finalized on 03/08/90.
01/18/91	A building permit (#91094836) was issued for a 58 foot segment of a Wall (wood). The permit was finalized on 05/15/91.
05/18/91	A building permit (#91105694) was issued for a four-foot high, 62-foot segment of a Wall (wrought iron). The permit was finalized on 05/15/91.
04/17/92	A building permit (#91116815) for patio cover/carport additions. The permit was expired on 04/17/92.

<b><i>Pre-Application Meeting</i></b>	
01/23/09	A pre-application meeting was held and the requirements for submitting a Variance were discussed.
<b><i>Neighborhood Meeting</i></b>	
A Neighborhood Meeting was not required, nor was one held.	
<b><i>Field Check</i></b>	
03/05/09	<p>A field check was completed by staff with the following observations:</p> <ul style="list-style-type: none"> <li>• An existing addition to the principle dwelling along the eastern property line that encroaches into the required five-foot side yard setback.</li> <li>• An existing non-habitable Accessory Structure (Class II) on the western property line that encroaches into the required three-foot side yard setback.</li> </ul>

<b><i>Details of Application Request</i></b>	
<b><i>Site Area</i></b>	
Gross Acres	0.16 Acres

<b>Surrounding Property</b>	<b>Existing Land Use</b>	<b>Planned Land Use</b>	<b>Existing Zoning</b>
Subject Property	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
North	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
South	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
East	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
West	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)

<b><i>Special Districts/Zones</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Compliance</i></b>
<b>Special Area Plan</b>		X	
<b><i>Special Districts/Zones</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Compliance</i></b>
<b>Special Purpose and Overlay Districts</b>			
A-O Airport Overlay District – (175 feet)	X		Y*
<b>Trails</b>			N/A
<b>Rural Preservation Overlay District</b>			N/A
<b>Development Impact Notification Assessment</b>			N/A
<b>Project of Regional Significance</b>			N/A

\* The existing structure is one-story in height; this height is under the 175 feet height limitation by the A-O Airport Overlay District.

## DEVELOPMENT STANDARDS

### *Las Vegas Zoning Code Section 19.08.040*

<i>Standard – (Principle Dwelling)</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Lot Size	6,500	7004	Y
Min. Lot Width	65	70	Y
Min. Setbacks <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Corner</li> <li>• Rear</li> </ul>	20 5 15 15	20 Zero N/A 26	N*
Max. Building Height	2 stories or 35 feet, whichever is less	1 story	Y

<i>Standard – Accessory Structure (Class II)</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Setbacks <ul style="list-style-type: none"> <li>• Side</li> <li>• Rear</li> </ul>	3 3	Zero 45	N*
Max. Building Height	2 stories or 35 feet, whichever is less	1 story	Y
Min. Distance From Principle Dwelling	6	6.25	N/A

\* This Variance (VAR-33522) was submitted to allow a zero-foot side yard setback where five feet is required on the east property line for the principle dwelling, and to allow a zero-foot setback where three feet is required for a Accessory Structure (Class II) on the west property line.

## ANALYSIS

The applicant is requesting a Variance (VAR-33522) to allow a seven inch side yard setback where five feet is required for existing additions to the principle dwelling along the eastern property line and a zero-foot side yard setback along the western property line for an existing Accessory Structure (Class II) where three feet is required by Title 19.08.040.

The request for the Variance (VAR-33522) is a result of a self-imposed hardship. The placement of the additions to the principle dwelling along the eastern property line and the Accessory Structure (Class II) on the western property line was determined before consulting Title 19 standards. Construction commenced before obtaining the necessary permits from the Department of Building and Safety. Had the applicant consulted with the City prior to construction to determine allowable setbacks for the principle dwelling and for an Accessory Structure (Class II) the need for a Variance could have been eliminated. The proposed deviations are preferential in nature and are self-imposed; therefore staff recommends denial.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic

conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by commencing construction for additions to the principle dwelling and an Accessory Structure (Class II), prior to consulting with the City of Las Vegas. An alternative site design removing the additions to the principle dwelling along the eastern property line and moving the Accessory Structure (Class II) to a location in the rear yard would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

## **PLANNING COMMISSION ACTION**

The Planning Commission added condition #1 to which the applicant agreed.

## **NEIGHBORHOOD ASSOCIATIONS NOTIFIED**

17

## **ASSEMBLY DISTRICT** 3

**SENATE DISTRICT** 11

**NOTICES MAILED** 312 by City Clerk

**APPROVALS** 0

**PROTESTS** 0